

VOLUME II

COURT OF CRIMINAL APPEALS NO. 01-1540

APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF LEE COUNTY, ALABAMA

CIRCUIT COURT NO. CC 01 1001-1003

CIRCUIT JUDGE HON. ROBERT HARPER

Type of Conviction / Order Appealed From: SODOMY I (2 COUNTS) & RAPE I

Sentence Imposed: 16 YEARS

Defendant Indigent: ☒ YES ☐ NO

WILLIAM LEE KIRBY

LARRY COOPER

(334) 502-0022

NAME OF APPELLANT

P.O. BOX 1868

(Telephone No.)

(Address)

AUBURN, AL 36831

(City)

(State)

(Zip Code)

V.

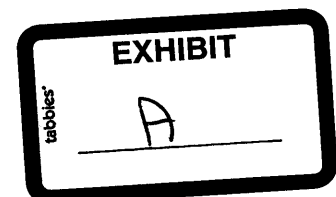
STATE OF ALABAMA

NAME OF APPELLEE

(State represented by Attorney General)

NOTE: If municipal appeal, indicate above, and enter
name and address of municipal attorney below.

(For Court of Criminal Appeals Use Only)



VOLUME TWO
STATE OF ALABAMA
IN THE CIRCUIT COURT FOR THE COUNTY OF LEE
THIRTY-SEVENTH JUDICIAL CIRCUIT
CRIMINAL

STATE OF ALABAMA,

PLAINTIFF,

VS.

CASE NOS. CC-01-1001

CC-01-1002

WILLIAM LEE KIRBY,

CC-01-1003

CC-01-1004

DEFENDANT

REPORTER'S OFFICIAL TRANSCRIPT OF THE
TRIAL IN CHIEF BEFORE THE COURT AND JURY

Before:

HON. ROBERT M. HARPER, Circuit Judge, in the Courtroom Number Four of the Lee County Justice Center located at Opelika, Alabama, on the 3rd of December, 2001, and being concluded on the 4th day of December, 2001.

A P P E A R A N C E S

HON. VANCE NICHOLAS ABBETT, District Attorney for the 37th Judicial Circuit of Alabama, and HON. DAVID GLANZER, Assistant District Attorney for the 37th Judicial Circuit of Alabama, appearing for the State of Alabama.

HON. KENNETH FUNDERBURK, Attorney at Law, appearing for the Defendant.

P R O C E E D I N G S

(WHEREUPON, Volume Two continues with the trial in chief as follows, to-wit:)

DR. LINDA ANZ,

a witness, having first been duly sworn to speak the truth, the whole truth and nothing but the truth, was examined and testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. GLANZER:

Q. Okay. What is your name?

A. Linda Anz.

Q. And where are you employed?

A. Pediatric Clinic.

Q. And what kind of duties do you perform there?

A. I'm a pediatrician and a partner at the Pediatric Clinic.

Q. And what kind of education and training do you have to perform those kinds of duties?

A. I have had four years of college, four years of medical school, three years of general pediatric training and a fellowship in pediatric endocrinology.

Q. And how many years have you actually been practicing pediatrics?

A. About twenty-three.

Q. And during that period of time how many physical exams

1 of, well maybe limit it to females, young females have you
2 done during that twenty-three years?

3 A. Too many to count. Thousands.

4 Q. Thousands?

5 A. Yes.

6 Q. And of those exams have you encountered what could
7 possibly be in your professional opinion sexual abuse?

8 A. Yes, sir.

9 MR. GLANZER: We would offer Dr. Anz as an expert
10 in pediatrics and in particular with experience in
11 recognizing sexual abuse and doing those kinds of
12 exams.

13 MR. FUNDERBURK: No objection.

14 THE COURT: All right.

15 Q. Before we get to any specifics here, in general if
16 you're conducting a physical exam is it always possible to
17 determine through a physical exam if someone has been
18 sexually abused?

19 A. No, sir. In fact literature shows that most children
20 who have been sexually abused have a normal physical exam.

21 Q. And by normal physical exam, what would that be? What
22 would you describe as normal? What would you expect to see
23 in a normal physical exam?

24 A. The normal exam, I assume we're talking about a pre-
25 pubertal child?

1 Q. Correct.

2 A. You would expect to see an intact hymen and no tears
3 or no lacerations, no scars. And you can't see the opening
4 of the vaginal area very well.

5 Q. Is it possible that some damage could occur from time
6 to time for various reasons and it heal and no longer be
7 noticeable?

8 A. Damage as far as physical abuse or -- yes --

9 Q. Yeah, I guess there's a difference. Let me take --
10 there can be external damage, correct?

11 A. Correct.

12 Q. And there can be internal damage?

13 A. Correct.

14 Q. In your experience if there's internal damage does it
15 normally heal itself and go away or will you normally see
16 some kind of indications?

17 A. It could be either way. It could be absolutely
18 normal, sort of like the way that if you, you know, you
19 bite your tongue and it bleeds and then later on there's no
20 scar, but this area also especially in young girls can be
21 very elastic and can heal so that you can see a child who
22 is raped one month with an open laceration and see her
23 three months later and the exam can be completely normal.

24 Q. So we have really three possibilities. You can either
25 see nothing at all, you can have damage that heals or we

1 can have damage that doesn't heal and there is some
2 indication of it?

3 A. That's correct.

4 Q. In your professional opinion is it possible for a
5 mature male to penetrate a child let's say under the age of
6 eight?

7 A. Yes, sir.

8 Q. Is there, and obviously the size of the child and the
9 people make a difference, but is there a difference between
10 the, in lack of any good terms to talk about on this, is
11 there a difference between the expansion tolerant
12 capability of a vagina versus an anal area? Does that vary
13 by person? In other words, does one expand more than the
14 other?

15 A. I don't know the answer to that. I know that it's
16 very rare to find a physical finding on anal penetration.
17 Is that what --

18 Q. Yes.

19 A. -- you wanted?

20 Q. And why would that be?

21 A. And it probably is the distension of the anus. But I
22 mean very rare, I don't think I've ever seen one, except
23 for like sexually transmitted disease, if you had condyloma
24 acuminata of an anus that I can say that it was definitely
25 penetrated.

1 Q. So in all your experience it's very rare to see anal
2 injury?

3 A. Correct.

4 Q. Let me take you back to June 25th of this year, 2001,
5 and ask you if you had occasion to do an exam on an
6 individual by the name of Autumn McLees?

7 A. Yes, I did.

8 Q. And how did you come to perform that exam?

9 A. She was referred to me by DHR and her mother brought
10 her in.

11 Q. And at that time what did you do? What did you do
12 first?

13 A. At first I talked to the mother and then I talked to
14 the child.

15 Q. Okay. And what is the reason for talking to someone
16 who would be brought to you first like that?

17 A. Well, as a physician the first thing we always do is
18 get a history and talk to our patients, which I did.

19 Q. Okay. And what did, you indicated you had a chance to
20 talk to Autumn herself. What did Autumn indicate to you?

21 A. Is it okay if I refer to my notes?

22 Q. Yes. If you'd be more comfortable maybe you could
23 read her exact words.

24 A. Well, she in essence when I asked her what happened
25 and she said, and she was indicating her mother's

1 boyfriend, he stuck his private part in my private part.
2 And she said the circumstances were that they were home
3 alone and they were watching TV and then he brought her
4 into the bedroom and took her and did it to her.

5 Q. Do they indicate whether they were afraid to tell
6 anybody?

7 A. Yes, they said that they were too afraid to tell
8 anybody at that time.

9 Q. And did you conduct a physical exam following?

10 A. I did, sir.

11 Q. And what were your findings?

12 A. Autumn's physical finding was very abnormal.

13 Q. Okay. And if you could describe that in detail, what
14 you were looking for and what you actually found?

15 A. Well, the opening was very large and I know there's a
16 lot of variation in that, but in, especially in the left
17 side and lower, like there was complete absence of the
18 hymen which is very abnormal. And on the other side the
19 hymen was very, very thin. You could also, like I was
20 saying later, usually you can't see into the entrance of
21 little girls and you could see very well into hers. So it
22 was definitely abnormal. There was also a question of a
23 notch which is an irregular little area on the upper left
24 and upper right.

25 Q. When you speak in terms of a notch, what is a notch

1 actually?

2 A. It's sort of a jagged area that's sort of carved out
3 of the hymenal ring.

4 Q. Does it have anything to do with previous injury?

5 A. Yes, it does. We are taught that that's one of the
6 signs of sexual abuse.

7 Q. I might be wrong on this, but if say skin is solid
8 like that and there's a tear that separates, it would be
9 possible I guess to sew it together or something and it
10 would grow back and heal in a line, but a notch is
11 something that stays apart and heals?

12 A. It's sort of a, it's just an irregularity of the hymen
13 configuration itself.

14 Q. Okay. So --

15 A. And the hymen doesn't, you know, it can't stick
16 together because the two pieces don't come together.

17 Q. So it can't come back?

18 A. A lot of times. Sometimes it's, it's elastic, and so
19 that's why sometimes you don't find physical findings, but
20 on other occasions it's been injured to a point that it
21 doesn't regrow, it doesn't come back and then it's absent
22 altogether or very, very thin, like hers was.

23 Q. Based on your experience how would you classify the
24 extent of her injury? You can say abnormal but --

25 A. I would say hers was very abnormal to extremely

1 abnormal. I mean, there's no question in my mind that this
2 was an abnormal exam.

3 Q. I know you haven't seen these, but this was a report
4 that's in evidence now State's exhibit number six which is
5 Children's Hospital up in Virginia and they have an
6 assessment, and I guess read as much of it as you want, but
7 particularly look at the assessment and see if you agree
8 with their findings?

9 A. Yeah, I agree completely with their findings and in
10 fact I'm sort of impressed that they saw the same thing
11 that I saw.

12 Q. And what are they indicating as findings?

13 A. Would you like me to just read it?

14 Q. Okay.

15 A. She has very abnormal genital examination. She has a
16 complete lack of hymenal tissue at the base. Additionally
17 there is an avascular area consistent with a scar that
18 extends from the distal vagina into the posterior
19 fourchette. This injury is consistent with a penetrating
20 injury to the genitals. It is consistent with her stated
21 history of penile vaginal penetration.

22 Q. Okay. Now, there's been some testimony that at some
23 point and I believe it was March, '98 or March, '99, that
24 Autumn had complained of falling on what they called a
25 balance beam, but testimony indicated that it was maybe a

1 short beam like that. Would you find the injury that's
2 described that you saw as well as what's described in that
3 report consistent with falling on what's described as some
4 kind of beam?

5 MR. FUNDERBURK: Objection, Your Honor, that's
6 not the proper predicate or form of question for
7 getting a medical opinion on that subject.

8 THE COURT: Sustained.

9 Q. You indicated there's different ways of, where injury
10 could occur. What kind of ways can a hymen be injured
11 generally speaking?

12 A. It has to be a penetrating injury, something that
13 actually goes through the vagina. It's not going to be
14 something which is blunt that doesn't go through the
15 vagina.

16 Q. And in regard to Autumn her injury would be consistent
17 with a penetrating injury?

18 A. That is correct.

19 Q. And with regard to Lillian, did you perform a physical
20 exam on her?

21 A. I did not.

22 Q. Okay. And were you aware that she had been examined
23 in Virginia?

24 A. I was aware of that.

25 Q. and were you aware that they had found nothing as far

1 as any scar injury, that kind of thing?

2 A. I am aware of that.

3 Q. And was that the reason why you didn't feel it was
4 necessary to look?

5 A. Well, she was not referred to me, and so she was not
6 there for me to be examined, so --

7 Q. Okay. So she just wasn't brought there?

8 A. Correct.

9 Q. Okay.

10 A. I think she was with her but I don't recall.

11 Q. Nobody indicated anything to you?

12 A. Yeah. They didn't want me to examine her, so I
13 didn't.

14 Q. You just weren't asked to look. Okay. That's all I
15 have right now.

16 THE COURT: Cross examination.

17 CROSS EXAMINATION

18 BY MR. FUNDERBURK:

19 Q. Dr. Anz, do you normally agree with another doctor
20 without seeing their report?

21 A. I don't know how to take that statement. It depends.

22 Q. Well, the statement is, do you normally agree with
23 another doctor without seeing their written report where
24 there is a written report?

25 A. It depends who the doctor is and what the report is

1 about.

2 Q. Well, do you know Dr. Starling?

3 A. No, I don't.

4 Q. So I'm going to ask you again, do you normally take or
5 agree with a report you have not seen from a physician you
6 don't know, and agree with it?

7 A. It depends what my own physical exam was and what I
8 saw.

9 Q. Well --

10 A. And my own findings.

11 Q. -- how do you know what that doctor saw if you didn't
12 see the report?

13 A. I think it's better to be objective and to make your
14 own mind up.

15 Q. Ma'am, the question though is whether you can agree
16 with another doctor's examination where he's made findings,
17 a doctor you don't know, whether you can agree with those
18 findings without seeing his report and knowing what his
19 findings were?

20 A. I am still confused. In order to agree with another
21 doctor I have to make my own physical exam of the person
22 and talk to them first and then find out what their
23 physical or their findings are. And if we agree I agree,
24 if we are not, well then I don't agree. I make up my own.

25 Q. Well, so you'd have to see the doctor's report to know

1 what his findings were or talk to him on a phone?

2 A. That's correct.

3 Q. Now before you agreed with Dr. Starling and his report
4 did you talk to him on the telephone?

5 A. I did not.

6 Q. Did you see his report?

7 A. I did not.

8 Q. So you agreed with him without knowing what his report
9 was or what his findings were?

10 A. Well, if somebody tells me that his findings are the
11 same as mine I guess I would agree with them.

12 Q. But you didn't talk to him, based on what you've just
13 said in your report.

14 MR. GLANZER: Judge, we'd object to that.

15 THE COURT: You just said that, Mr. Funderburk.

16 Next question.

17 Q. Okay. In your report, you have your report there?

18 A. I do.

19 Q. Down at the bottom apparently the child has also been
20 examined by a forensic expert in Virginia and I agree with
21 his or her assessment. You didn't even know if that person
22 was a male or female, did you?

23 A. No, but I was told that this child had been examined
24 by a forensic specialist. It's true --

25 Q. Nor had you seen that person's assessment?

1 A. And I was told that they felt that the child had been
2 sexually abused and this child's physical exam was so
3 impressive that I concurred that this child had been
4 sexually abused.

5 Q. But to answer my question, you did this without
6 knowing what was in the report and then you said it would
7 be helpful to have this record as well. You didn't have
8 it, did you?

9 A. I did not.

10 Q. In fact, when is the -- when did you first see the
11 report from the doctor in Virginia?

12 A. Today.

13 Q. Now, in that doctor's report he mentions that some
14 photographs were taken. Do you have his report there?

15 A. I do.

16 Q. Okay. On his findings over here, if you'd just flip
17 over real fast, next page, let me -- I can't see that far.
18 Okay. Number one says what?

19 A. A colposcopic exam or photographs were taken.

20 Q. Did you see those photographs?

21 A. No, sir, I did not. Or actually I just saw them a few
22 minutes ago.

23 Q. The photographs?

24 A. Uh-huh. (Affirmative response.) And that's the first
25 time I've ever seen them.

1 Q. Did you do such an exam yourself?

2 A. No, we don't have an instrument available in our
3 community.

4 Q. And that is a better way of examining somebody than
5 just visual, isn't it?

6 A. No, sir, it's not.

7 Q. Do you have any authorities you'd like to quote
8 stating that that type of exam is not superior to the eye
9 exam?

10 A. I think it's just another tool to confirm your
11 diagnosis. It's sort of like a laboratory exam or an X-
12 ray. I have a partner who worked full time with the San
13 Diego Sexual Abuse people and she felt that --

14 MR. FUNDERBURK: Your Honor, I'm going to object
15 to what her partner tells her.

16 THE WITNESS: Okay.

17 THE COURT: Sustained.

18 Q. Now do you have your entire office record there? I
19 may have asked you this earlier?

20 A. I don't have the entire record, I have part of it.

21 Q. If I show you what's been given to me could you
22 identify this as being the office record from your office?

23 A. Yes, that's our office records.

24 Q. And this nurse's note, is that also from your files?

25 A. It's from my files, that's correct.

1 Q. All right. If I pull these out of here, let me
2 inquire if I've got a clean copy.

3 A. I may have it. Is this -- I might have it.

4 Q. Oh, do you?

5 A. Yeah. This page, you're referring to?

6 Q. Yes, what about the other pages?

7 A. I have several.

8 Q. I believe you've got everything I was looking at.

9 A. Okay.

10 MR. FUNDERBURK: Your Honor, could I check and
11 make sure that's part of exhibit -- we haven't made it
12 an exhibit?

13 THE COURT: What are ya'll looking for?

14 MR. FUNDERBURK: I'm looking for the records from
15 the emergency department from her office, other than
16 the report.

17 THE COURT: Didn't you bring your records from
18 your office, Doctor?

19 MR. FUNDERBURK: She does have it.

20 THE COURT: Huh?

21 MR. FUNDERBURK: She does have it right here.
22 I'm just inquiring as to whether this has already been
23 introduced.

24 THE COURT: Have you got any objection to it?

25 MR. GLANZER: Not at this point.

1 THE COURT: Do you want to introduce it?

2 MR. FUNDERBURK: Yes, sir.

3 THE COURT: Mark it.

4 (WHEREUPON, the instrument hereinabove
5 referred to was marked for identification
6 as Defendant's exhibit number one.)

7 THE COURT: Defendant's number one is admitted.

8 (WHEREUPON, the instrument hereinabove
9 marked for identification as Defendant's
10 exhibit number one was admitted and
11 received into evidence.)

12 THE COURT: All right. Go ahead.

13 CROSS EXAMINATION RESUMED BY MR. FUNDERBURK:

14 Q. All right. Looking at your office record?

15 A. Uh-huh. (Affirmative response.)

16 Q. Was Autumn examined by your, by your place of
17 employment back in 1999?

18 A. She was.

19 Q. And going to the, it's not in order, but if you'll
20 look to the March 5, do you see that, a phone consult?

21 A. yes.

22 Q. And you see a reference there to this event occurring
23 on Wednesday at school? Do you see that?

24 THE COURT: Go up and point out what you want her
25 to look at, Mr. Funderburk.

1 MR. FUNDERBURK: Yes, sir, Your Honor.

2 A. Okay. I've got it.

3 Q. All right. You don't mind me standing here?

4 A. Okay.

5 Q. All right. March 5, it says Wednesday as school mom
6 noted blood on toilet seat and on her panties this morning.
7 And the jury will have it so they can read that. March 5
8 was a Friday, Wednesday would have been a Thursday. And I
9 represent to you that's the case, in 1999. So this event
10 would have occurred in '99, and this is out of order,
11 because that's '98. The next note is '99. If you can
12 confirm that. It shows March 5, 1999?

13 A. Uh-huh. That's correct.

14 Q. And I represent to you that March 5, 1999 was a
15 Friday.

16 A. Uh-huh. (Affirmative response.)

17 Q. And the Wednesday would have been the 3rd, two days
18 prior to that time.

19 A. Uh-huh. (Affirmative response.)

20 Q. All right. So your next note, if you'll put the page
21 back this way, it looks like there was a call, that's the
22 nurse's note, there was a call on the 7th, that would be
23 the nurse's note. That would be this one here.

24 A. Correct.

25 Q. On the 7th. And we've already read that.

1 A. Ten o'clock. Correct.

2 Q. Noting that, this one the mom stated the child fell on
3 Friday, that's just what it says?

4 A. Correct.

5 Q. And that she is still bleeding essentially.

6 A. Right.

7 Q. You can read yours, I'll show you mine if you don't
8 mind me standing here this close.

9 Then the next note is Monday, March 8. And if
10 you would, just tell the jury what that, if you can read
11 all that, what that says?

12 A. Recheck of the private areas. Still bleeding. Fever
13 x two days.

14 Q. Now that was found at the time to be the result of a
15 straddle injury, was it not, by your office?

16 A. Well, the history was that the child had fell at the
17 school.

18 Q. Yes, ma'am.

19 A. And when you're a physician you pay attention to the
20 history. We're not going to be looking for problems. And
21 so we assume that the history was valid. And also, I'd
22 like to point out apparently there was a lot of bleeding in
23 the area, so it could have been that she was unable to see
24 anything else but the blood. I don't know, I wasn't there
25 and I didn't examine the child for sure.

1 Q. But so we can move on, I mean the finding at that time
2 was a straddle injury?

3 A. It was assumed it was a straddle injury because of the
4 history.

5 Q. Well I know, ma'am, but the finding was a straddle
6 injury?

7 A. That was the assumption, yes. It was a vaginal
8 laceration is actually the diagnosis.

9 Q. That left scars which are still there? In other
10 words, there was a scar which you found when you examined
11 her, so there was a scar from this time?

12 A. Well, we assumed that's from this time but it could
13 have been from other times. I don't know.

14 Q. Now ma'am, in your report I note that you use the word
15 as you have in your testimony, agreeing with Dr. Starling
16 I believe it is, that the findings are, actually that the
17 findings are not, in terms of the vaginal area, a normal
18 finding, let me get this out of my mouth, a normal finding
19 is, doesn't tell you anything really about whether or not
20 there's penetration, is that what you testified to earlier?

21 A. It doesn't rule out penetration, correct.

22 Q. Doesn't rule out penetration. Now can you state with
23 any reasonable degree of medical certainty looking at the
24 two reports that you've seen, one on Lillian and one on
25 Autumn, can you state with a reasonable degree of medical

1 certainty that there is physical evidence supporting the
2 claim of Autumn and Lillian that they were penetrated
3 anally?

4 A. There's no -- well, I guess I tend to believe the
5 children and just with their history --

6 Q. Ma'am, I --

7 THE COURT: Dr. Anz, you need to listen to this
8 question carefully and answer it as he asks it. The
9 Prosecutor can clarify anything that needs to be
10 clarified.

11 THE WITNESS: Okay. I'm sorry.

12 Q. Would you like for me to --

13 A. Repeat the question, please.

14 Q. Based on your examination of Autumn and the reviewing
15 of Dr. Starling's reports from both, on both Lillian and
16 Autumn, which you now have, can you state with a reasonable
17 degree of medical certainty that there is physical evidence
18 consistent with penetration?

19 A. I don't have the report of Lillian and I have not, I
20 don't have it in hand, and have not had a chance to review
21 it. But there was no physical evidence of anal penetration
22 as we talked about later, I very rarely see.

23 Q. And again, reviewing, since you did not examine
24 Lillian, but you have seen the report, can you state with
25 any reasonable degree, with a reasonable degree of medical

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1 certainty that there was a physical finding in the report
2 by Dr. Starling regarding Lillian that there's physical
3 evidence supporting her testimony or her statement that she
4 had been vaginally penetrated many times?

5 A. There's no physical evidence. But again, sometimes
6 there's not.

7 Q. Dr. Anz, that's all I have. Thank you.

8 THE COURT: Any redirect?

9 REDIRECT EXAMINATION

10 BY MR. GLANZER:

11 Q. And I believe you said the actual diagnosis on Autumn
12 was vaginal laceration, correct?

13 A. That is correct. The first time?

14 Q. Correct.

15 A. Yes. Back in March of '99. That's correct, sir.

16 Q. Would that be consistent with blunt force trauma or
17 would there have to be more involved?

18 MR. FUNDERBURK: Your Honor, we object. Again,
19 that's really not the proper for of the question.

20 THE COURT: Sustained as to the form of that
21 question.

22 Q. Can you state with a reasonable degree of medical
23 certainty that the vaginal laceration could have been made
24 by a blunt force trauma?

25 A. It's hard for me to say because I did not examine the

1 A. Was I told that by the child? No.

2 Q. Okay. But you have learned that since from other
3 sources?

4 A. I have learned that from other sources, yes, sir.

5 Q. And it would be, I guess your opinion, based on what
6 you issued in your report, that you feel that based on your
7 exam that it would be a class three to four range sexual
8 abuse?

9 A. That's correct.

10 MR. FUNDERBURK: We would object.

11 THE COURT: Sustain the objection to that.

12 Q. Are there classes of sexual abuse categorized
13 medically?

14 A. Yes, that's, that helps us tell you exactly how
15 certain we are of the abuse.

16 Q. If you could, could you generally describe what you
17 would be looking for in each class or what class contains?

18 A. A class one would be not a good history, maybe
19 something, you know, a little unusual on physical exam, not
20 very likely that the child was abused.

21 Q. Class two?

22 A. Class two might be again a physical finding but no
23 history or maybe history and -- well, that's about it.

24 Q. Okay. And then a class three?

25 A. A class three is when you get a history and maybe no

1 physical finding, or a pretty impressive physical exam but
2 no history.

3 Q. And class four?

4 A. Class four is GC, a laceration where it's acute and a
5 history.

6 Q. Okay. Could a class four also include something like
7 an immediate report with sperm being found?

8 A. Oh, definitely.

9 Q. And that would also give you some more people?

10 A. That would be class four.

11 Q. Did you in this particular case classify in your
12 opinion the findings in this case concerning Autumn McLees?

13 A. Yes, I thought it was a class three to a class four.
14 I thought her physical findings were extremely impressive
15 and she was now giving us a very detailed history.

16 Q. Okay. I have nothing further.

17 RECROSS EXAMINATION

18 BY MR. FUNDERBURK:

19 Q. Dr. Anz, you took a medical history?

20 A. Yes, sir.

21 Q. And the people from your office took a history back in
22 1999; right?

23 A. Correct.

24 Q. Now a history, would it not be fair to say that one
25 reason you take a history is so you can compare the

1 excused.

2 And we will call it a day, ladies and
3 gentlemen. I'm going to let you go and ask you to be
4 back in the morning at nine o'clock. You do not need
5 to call in on the code-a-phone tonight, the message on
6 there will be for the other jurors, not you. We'd ask
7 you to be back here at nine. When you come back in
8 the morning, come back up here to the jury room behind
9 you. We'll let you in that side door down there, if
10 you want to use that door. I'd say we have a bailiff
11 out there by about a quarter to nine. And come on up
12 here and we'll get started promptly at that time.

13 Please don't discuss this case with anybody
14 or let anybody discuss it with you. That wouldn't be
15 fair to either side. I know you want to be fair to
16 both sides. So just forget about it until in the
17 morning and we'll begin at that time.

18 You may go out that door.

19 (WHEREUPON, the following proceedings were
20 had and done out of the jury's presence and
21 hearing, to-wit:)

22 THE COURT: All right. Now, what is it you want
23 to do, Mr. Glanzer?

24 MR. GLANZER: Dr. Anz's report.

25 MR. FUNDERBURK: I think I put the whole thing

1 in.

2 MR. GLANZER: Yeah, he was saying he might have
3 put it in but I --

4 THE COURT: This right here? She had that with
5 her. What is that?

6 MR. GLANZER: Yeah, I thought he was talking
7 about the old stuff and not the new stuff.

8 THE COURT: All right. Nine o'clock in the
9 morning.

10 (WHEREUPON, proceedings were in recess from
11 December 3, 2001 at 4:50 o'clock p.m. until
12 December 4, 2001, at 9:00 o'clock a.m.)

13

14 PROCEEDINGS SECOND DAY OF TRIAL

15 THE COURT: Everybody ready to go today?

16 MR. GLANZER: Yes, sir.

17 MR. FUNDERBURK: Yes, sir, Your Honor.

18 (WHEREUPON, the jury returned to the
19 courtroom and the following proceedings
20 were had and done in its presence and
21 hearing, to-wit:)

22 THE COURT: Good morning, ladies and gentlemen.

23 THE JURY: Good morning.

24 THE COURT: I'm glad everybody got back all
25 right.

1 Call your next witness.

2 MR. GLANZER: Shane Healy.

3 SHANE HEALY,

4 a witness, having first been duly sworn to speak the truth,
5 the whole truth and nothing but the truth, was examined and
6 testified as follows, to-wit:

7 DIRECT EXAMINATION

8 BY MR. GLANZER:

9 Q. What is your name?

10 A. Shane Daniel Healy.

11 Q. And where are you employed?

12 A. The Opelika Police Department.

13 Q. And what kind of duties do you perform for them?

14 A. I'm a detective.

15 Q. And do you specialize in any particular types of
16 cases?

17 A. Yes, sir. Crimes involving children, especially
18 sexual crimes against children.

19 Q. And how long have you been doing that?

20 A. I've been in that capacity for almost three years.

21 Q. Okay. At some point did you become, I guess what's
22 called the case agent in the investigation of the Autumn
23 McLees and Lillian McLees case?

24 A. Yes, sir, I did.

25 Q. Tell the jury what a case agent does, first of all?

1 A. Basically what my job is, is to coordinate everything
2 that goes on during the investigation. In Lee County we do
3 what we call a multi-disciplinary team approach to these
4 types of investigations. What that includes are people
5 from law enforcement, the Department of Human Resources,
6 Child Advocacy Center, people from the District Attorney's
7 office. We all get together and investigate these cases
8 together as one entity instead of everybody doing their job
9 separately and differently at different times. It helps us
10 to not revictimize the children, I guess is a good way to
11 put it.

12 Q. And when you mentioned law enforcement, what groups
13 are involved in the multi-disciplinary team?

14 A. The Opelika Police Department, the Auburn Police
15 Department and the Lee County Sheriff's Department.

16 Q. And you mentioned DHR?

17 A. Yes, sir, DHR.

18 Q. And what kind of people are attending from DHR?

19 A. What they call CAN investigators, child abuse and
20 neglect investigators.

21 Q. Okay. And you mentioned the Child Advocacy Center,
22 who represents them, what kind of people are associated
23 with them?

24 A. Brenda Moss, basically who is the forensic
25 interviewer.

1 Q. And the D.A.'s office?

2 A. Yes, sir. Yourself and some of the other Assistant
3 District Attorneys.

4 Q. And when you say they investigate, do they
5 individually actually get involved in the specific
6 investigation that you're doing?

7 A. Each group has a specific function. We all have
8 different things that we need to accomplish during an
9 investigation and we help each other with whatever they
10 need. We share information, the things that I may need
11 that DHR has, they will provide to me, vice-versa.

12 Q. Okay. What's your eventual goal when you're looking
13 at a case?

14 A. Successful prosecution.

15 Q. Okay. At what point does the case leave the multi-
16 disciplinary team?

17 A. Once a determination has been made at a team meeting
18 that we want to go ahead with the prosecution, then the law
19 enforcement will take over as far as completing warrants
20 and arresting the Defendant and then we turn it over to the
21 District Attorney's office.

22 Q. And is that the process you followed in the Autumn and
23 Lillian McLees case?

24 A. Yes, sir, it is.

25 Q. In this case did you also receive records from

1 Virginia?

2 A. Yes, sir, I did.

3 Q. And what kind of records did you receive from
4 Virginia?

5 A. Received a interview of Autumn McLees that is actually
6 a typed, the interview was recorded, tape recorded, and
7 then transcribed. I received a report of an interview with
8 Lillian, and then I received medical exams of both Autumn
9 and Lillian that were completed at the Children's Hospital
10 up there.

11 Q. When you say interviews on both children, who was
12 doing the interviewing in Virginia, what groups were doing
13 that?

14 A. Dorrie Milford who is a forensic interviewer for the
15 Child Protective Services in Chesapeake, Virginia.

16 Q. Professionals?

17 A. Yes, sir.

18 Q. Upon receiving that information what did you do?

19 A. I received that information, collected as much
20 information as possible, I contacted the girl's mother,
21 explained to her what was involved in completing an
22 investigation like this here in Alabama, and the big part
23 of that was that they would need to travel to Alabama
24 several times so that we could perform forensic interviews,
25 medical exams if needed, they would need to come down for

1 any court hearings, to sign warrants, anything like that.

2 Q. And did they, I believe do that?

3 A. Yes, sir, they did.

4 Q. Obviously. When you say interviews and the medical,
5 in essence did you decide to re-investigate the whole case?

6 A. We decided to use the people that we have here to not
7 necessarily redo what was done in Virginia, but to show
8 that what was done in Virginia is true and correct.

9 Q. Okay. And at some point did they come down for
10 interviews?

11 A. Yes, sir, they did.

12 Q. And when was that?

13 A. June 25th of this year.

14 Q. And also when was the medical exams conducted?

15 A. The medical exams here in Alabama?

16 Q. Yes.

17 A. On June 25th.

18 Q. After having those interviews and the medical exams
19 did you have an opportunity to compare the interviews here
20 and the medical versus what was in Virginia?

21 A. Yes, sir, I did.

22 Q. And did you find those consistent to you?

23 A. Yes, sir.

24 MR. FUNDERBURK: Objection, we --

25 THE COURT: Sustain the objection. Disregard

1 that last answer, ladies and gentlemen. Now, don't
2 answer out when there's an objection until I have a
3 chance to rule on it.

4 THE WITNESS: Yes, sir.

5 Q. I have nothing further.

6 THE COURT: Cross examination.

7 MR. FUNDERBURK: No questions.

8 THE COURT: You can step down. Next witness.

9 MR. GLANZER: Brenda Moss.

10 BRENDA MOSS,

11 a witness, having first been duly sworn to speak the truth,
12 the whole truth and nothing but the truth, was examined and
13 testified as follows, to-wit:

14 DIRECT EXAMINATION

15 BY MR. GLANZER:

16 Q. What is your name?

17 A. Brenda Moss.

18 Q. And where are you employed?

19 A. The Child Advocacy Center of East Alabama.

20 Q. And how long have you been with them?

21 A. Three years.

22 Q. And prior to that where were you employed?

23 A. I was employed at the Opelika Police Department.

24 Q. And how long have you worked for them?

25 A. Twenty-six years.

1 Q. And during those twenty-six years with the Opelika
2 Police Department did you specialize in any particular kind
3 of cases?

4 A. It was mainly in the juvenile division and also I was
5 involved in a lot of the sexual abuse and rape
6 investigations.

7 Q. Okay. And then the Child Advocacy Center as a
8 forensic interviewer. What kind of education and training
9 have you had to perform those kinds of duties?

10 A. I have a B.S. degree from Auburn University in child
11 development and I also attended a fifty hour school on
12 forensic interviewing.

13 Q. Okay. And since becoming an interviewer,
14 approximately how many children have you interviewed?

15 A. Approximately 250.

16 Q. And have you previously testified in court, either OPD
17 as a case agent for part of an investigation, and as a
18 forensic interviewer?

19 A. Yes, I have.

20 Q. And approximately how many times?

21 A. Probably 75 to 100 times.

22 Q. Okay. We'd offer her as an expert in forensic
23 interviewing at this time.

24 MR. FUNDERBURK: No objection.

25 THE COURT: Okay. So recognized.

1 Q. When you do a forensic interview and -- well, let me
2 ask you first, what is the range of the ages of the
3 children that you interview?

4 A. Anywhere from two and a half to three up until their
5 seventeenth birthday.

6 Q. Okay. And how do you go about conducting an
7 interview?

8 A. Basically we get our referrals from the Department of
9 Human Resources or the law enforcement agency involved in
10 the case. They would call me when they get a report. We
11 coordinate a time for me to interview the child, the child
12 is brought to the center by their custodians or, you know
13 parent or custodians. And I have very little information
14 about the case when I go into the interview. That's just
15 the way it's recommended that we do interviews. And I just
16 begin talking to the child about just kind of rapport
17 building, finding out about school and who all they live
18 with, their favorite things at school, their family. And
19 then I ask them, you know, if they know why they've been
20 brought to the center to talk to me. Most of them do know
21 why they're there. Then I go, depending on their age I
22 explain truth and lies and real and pretend to the younger
23 children, and then I actually have some rules that I go
24 over with the older children to make sure that they
25 understand their obligation to tell me the truth and also

1 to make sure that they understand that they have all the
2 information. Most kids things that adults have the
3 information, not them. But in cases like this I make sure
4 they understand that they have all the information. I let
5 them know that if they don't know something or don't
6 remember not to guess at an answer. A lot of times kids
7 just think they have to give adults an answer when they're
8 asked something. I let them know that if I get something
9 wrong, a lot of times I'll repeat back to them things that
10 they have told me and I make sure that they know that they
11 can correct me if I get something wrong. And I tell them
12 if a question is too hard that we can come back to it
13 later. And then I go into, you know, the questioning
14 techniques that I was trained in from the, open ending
15 questions like tell me what all happened, tell me
16 everything you can remember that happened, to the more
17 abuse focus questions. And we just have a wide range of
18 questioning techniques from multiple choice, I do not ask
19 any leading questions to the children and then just try to
20 find out as many facts as I can about what has happened to
21 them.

22 Q. Do you conduct this in a special area?

23 A. I do.

24 Q. And describe that if you would?

25 A. It's just a, we have an interview room at our center

1 and it's just child friendly, has paintings on the wall, we
2 have two rocking chairs in there and then a small round
3 table with two chairs for the younger children, have
4 crayons in there and paper for them to draw on. And then
5 we have an observation room that's located right next to
6 the interview room.

7 Q. And when you say observation room, how is it possible
8 that somebody can observe what you're doing in the
9 interview room?

10 A. We have the one-way mirrors, windows.

11 Q. When someone is in that other room are they permitted
12 to in any way interrupt what you're doing?

13 A. No. Not at all.

14 Q. Did you conduct the interview of both Autumn McLees
15 and Lillian McLees?

16 A. Yes, I did.

17 Q. And when did you do that?

18 A. It was on June the 25th of this year.

19 Q. Okay. And approximately how old were each of them at
20 that time?

21 A. Autumn was eight years old and Lillian was ten years
22 old.

23 Q. Okay. Was there anybody else present when you
24 conducted those interviews?

25 A. Just the child, no, in the interview and then

1 Detective Healy of the Opelika Police Department and Yarbi
2 Cound who is a social worker with Lee County DHR, they were
3 present in the observation room.

4 Q. Okay. And when you conducted each one of these
5 interviews you, did you try to determine whether the
6 knowledge that the child had was something from their own
7 personal knowledge?

8 A. Yes, I did.

9 Q. And did it appear to be?

10 A. It appeared to be.

11 Q. And when you're interviewing do you try to determine
12 whether they appear to be, have the, I guess appropriate
13 maturity for their age?

14 A. Yes, I do like a child development, making sure --
15 especially with the younger children, making sure they
16 know, like they know the basic colors, if they understand
17 the concept of prepositions, inside, outside, under, on top
18 of, that sort of thing.

19 Q. When you're dealing with children of this age do you
20 see difference in their understanding of things like time
21 and space compared to adults?

22 A. Oh, very much so, especially with Autumn.

23 Q. What kind of differences do you see?

24 A. In a child like at six years old they may be able to
25 count to fifty or a hundred but they really don't

1 understand the concept, if you ask them how many times did
2 something happen. How many times did you go to school this
3 week. They just don't understand that concept, even though
4 they may can count to fifty or fifteen or twenty they have
5 a hard time understanding the concept of the number of
6 times something happened.

7 Q. It's just different for children?

8 A. Their developmental level. It's very normal.

9 Q. When you interviewed them as well as others, do you
10 try to look for any, maybe biases or coercion that might
11 have caused them to relate these kinds of things?

12 A. I think basically as you become more experienced in
13 doing this you can almost tell a difference when a child
14 has been coached, just the way they make the disclosure and
15 the way they talk to you. Neither of these children
16 appeared to be coached or had any motive for making this
17 up.

18 Q. And how did they get to the center, who brought them
19 there?

20 A. They were brought there by their mother and their
21 maternal grandmother.

22 Q. And at anytime did they try to influence anything you
23 were doing or any of the content of the children's
24 statements to you?

25 A. No. I take the children back into the, you know, to

1 the interview room, you know, shortly after they get there
2 and then there's always one of our employees, you know, in
3 the room where they're waiting, just playing with the
4 children.

5 Q. Okay. And you had already indicated you try to avoid
6 any leading questions, in other words, yes or no type of
7 answers. And did you do that in this case?

8 A. I did.

9 Q. Avoid those kind of things? When you asked the
10 opening questions did their responses appear to be age
11 appropriate?

12 A. Yes, very much so.

13 Q. And also content appropriate?

14 A. Yes.

15 Q. Did either one of the children indicate that they were
16 suffering from any, maybe medical disorder or any
17 discomfort or pain that maybe somehow would have affected
18 their ability to tell you anything?

19 A. No, they did not. They did not appear to be that way.

20 Q. They appeared to be coherent?

21 A. Right.

22 Q. Let me refer you to Autumn McLees, and didn't -- let
23 me ask you first, when you talked to these individuals did
24 you record the statement in any way?

25 A. I did not. I made notes during the interview.

1 Q. Okay. You made hand notes?

2 A. Hand notes.

3 Q. At sometime did you transcribe those into a written
4 report?

5 A. Yes, I did.

6 Q. And was that report made, I guess a permanent part of
7 your records?

8 A. Yes.

9 Q. Let me show you first what's marked State's exhibit
10 number two and ask if you can identify this?

11 A. Yes, this is the report on the interview with Autumn.

12 (WHEREUPON, said document was marked for
13 identification as State's exhibit number
14 two.)

15 DIRECT EXAMINATION RESUMED BY MR. GLANZER:

16 Q. Okay. And that was the report you prepared?

17 A. Yes, it is.

18 Q. And have you had an opportunity to review that since
19 you made that report?

20 A. Yes, I have.

21 Q. And does it fairly and accurately reflect the
22 interview as you recall it?

23 A. Yes, it does.

24 MR. GLANZER: We'd offer State's number two at
25 this time, Judge.

1 MR. FUNDERBURK: Objection.

2 THE COURT: Did you say no objection?

3 MR. FUNDERBURK: Objection. We object to it.
4 She can testify from it but we'd object to the
5 document itself.

6 THE COURT: Sustained. Well, you mean you're
7 objecting to the document going to the jury?

8 MR. FUNDERBURK: Yes, sir. Okay. It will be
9 admitted for the purposes of her testimony but will
10 not be permitted to go to the jury.

11 MR. FUNDERBURK: Yes, sir.

12 (WHEREUPON, said document was received into
13 evidence as State's exhibit number two, but
14 was not permitted to be sent to the jury
15 during deliberations.)

16 DIRECT EXAMINATION RESUMED BY MR. GLANZER:

17 Q. If you would, we'd ask that you read that report at
18 this time?

19 A. Okay. Do you want me to start with the second
20 paragraph?

21 Q. That would be fine.

22 A. Okay. "Autumn is eight years old and she just
23 completed the second grade. Autumn said she went to school
24 at Butts Road Primary School in Chesapeake, Virginia.
25 Autumn said she had two teachers, Ms. Johnson and Ms.

1 Rainfelt. I asked Autumn her favorite subject in school
2 and she said that she liked art the best. I asked Autumn
3 if there was anything else, anything she didn't like about
4 school and Autumn said she liked everything about school.

5 I asked Autumn who all she lives with. Autumn
6 said she lives with her grandma, her papa, her mom, two
7 sisters, Lillian and Elizabeth, and two cousins, Robbie and
8 Carlton.

9 I asked Autumn if she knew why she had been
10 brought to the center to talk to me. I told Autumn that
11 that was" -- I'm sorry. "Autumn said it was about some bad
12 things Lee did to her when they lived in Opelika. I told
13 Autumn that was what we would be talking about. I then
14 told Autumn that we would only talk about things that had
15 really happened and not pretend things. I used several
16 examples in explaining truth and lies and Autumn responded
17 appropriately and said she would tell the truth.

18 I asked Autumn who Lee was. Autumn said Lee
19 lived with them when they lived in Opelika and he was her
20 mom's boyfriend. I told Autumn to tell me everything she
21 could remember about what happened. Autumn said that Lee
22 did some bad things to her and her sister Lillian. Autumn
23 said that Lee choked her until she passed out. I told
24 Autumn to tell me more about that. Autumn said she
25 couldn't remember why Lee did that or anything else about

1 it.

2 Autumn said a friend of her mother's had given
3 her a pair of handcuffs for a birthday or Christmas
4 present. Autumn said Lee put the handcuffs on her hands
5 behind her back and then he would duck her in the water in
6 the bath tub. Autumn said Lee would hold her head under
7 the water in the bath tub. Autumn said Lee did that to
8 Lillian but most of the time he just did it to her. Autumn
9 said Lee would hold her head under the water in the toilet
10 and then flush the toilet. Autumn said Lillian told her
11 that Lee did that to her too. Autumn said she believed Lee
12 did that to Lillian because she would hear Lillian
13 screaming in the bathroom.

14 I asked Autumn if there was anything else Lee did
15 to her. Autumn said Lee stuck his private part in her
16 private part. I asked Autumn to point to her private part
17 that she was talking about. Autumn pointed to her butt.
18 I asked Autumn if she had a name for that part of her body.
19 Autumn said she thought it was called a gluteus maximus.
20 I asked Autumn if she had another name for it and she said
21 it was her back private part. I asked Autumn if she had a
22 name for Lee's private part and Autumn said she called it
23 a winkie. I asked Autumn if Lee put his winkie against her
24 private part or inside and she said he put it inside and it
25 hurt her. I asked Autumn if her clothes were on or off

1 when this happened. Autumn said Lee would tell her to take
2 her clothes off and she did. Autumn said she took all her
3 clothes off, even her panties. I asked Autumn if anything
4 happened to Lee's clothes. Autumn said Lee would take all
5 his clothes off. Autumn said Lee wore boxer underwear most
6 of the time. I asked Autumn if Lee did anything else with
7 his winkie. Autumn said Lee put his winkie inside her
8 mouth. I asked Autumn if Lee's winkie felt hard, soft or
9 some other way. Autumn said it felt hard. I asked Autumn
10 if she felt anything come out of Lee's winkie when it was
11 inside her mouth and she said no. I asked Autumn where
12 this happened. Autumn said it happened when they were all
13 living in Opelika in a trailer. Autumn said the trailer
14 was past Golden Corral. I asked Autumn who all would be at
15 home when this happened. Autumn said it always happened
16 when her mom was at work and she, Lillian and Elizabeth
17 would be at home with Lee. Autumn said Lee kept them while
18 her mom worked. I asked Autumn if anything else happened.
19 Autumn said one time Lee had his winkie inside her back
20 private part and it slipped and went inside her pie. I
21 asked Autumn what her pie was. Autumn said it was her
22 front private part and she pointed to her vaginal area.

23 Autumn said Lee put her in the bath tub. Autumn
24 said Lee knew he had hurt her because she had blood coming
25 out of her pie. Autumn said when Lee saw the blood he put

1 her in the bath tub. I asked Autumn if she told anyone
2 about that. Autumn said she told her mom that she had
3 fallen off the balance beam at school. Autumn said that
4 was what Lee told her to tell her mom.

5 I asked Autumn if she went to the doctor because
6 of this. Autumn said she didn't think she did but she
7 couldn't remember for sure.

8 Autumn said she didn't think Lee meant to hurt
9 her pie but his winkie slipped when he had it inside her
10 back private part.

11 I asked Autumn what grade she was in when all
12 this happened. Autumn said she was in kindergarten. I
13 asked Autumn if she remembered the name of her school and
14 she said no.

15 I asked Autumn if there was anything else she
16 could remember. Autumn said one time Lee slammed her head
17 against the wall in the trailer. Autumn said she didn't
18 know why Lee did that but it left a hole in the wall.
19 Autumn said that happened in her bedroom.

20 Autumn said she shared a bedroom with Lillian and
21 Elizabeth.

22 I asked Autumn if Lee put his winkie inside her
23 private part, in her back private part one time, two times
24 or a bunch of times and she said a bunch of times.

25 I asked Autumn if Lee put his winkie inside her

1 mouth one time, two times or a bunch of times and she said
2 it was a bunch of times.

3 I asked Autumn if Lee put his winkie inside her
4 pie one time, two times or a bunch of times and she said
5 that only happened one time.

6 Autumn said Lee's full name was William Lee
7 Kirby. Autumn said her mother had told her that today. I
8 asked Autumn if there was anything else she could remember.
9 Autumn said that Lee would kick and punch her and Lillian
10 and leave marks and bruises on their legs and belly. I
11 asked Autumn if that happened one time, two times or a
12 bunch of times and she said a bunch of times.

13 I asked Autumn if there was anything else she
14 could remember and she said no.

15 Autumn said she wanted me to know that everything
16 that she told me was the truth. I thanked Autumn for
17 talking to me and ended the interview." And the interview
18 lasted approximately forty minutes.

19 Q. Let me show you what's marked State's exhibit number
20 three and ask if you can identify this?

21 A. Yes, this is the report I completed on the interview
22 with Lillian McLees.

23 Q. And have you had an opportunity to review that since
24 you prepared it?

25 A. Yes, I have.

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1 Q. And does it fairly and accurately reflect the
2 interview as you recall it?

3 A. Yes, it does.

4 MR. GLANZER: Judge, we'd offer State's three for
5 the purposes of entering it for reading.

6 THE COURT: Admitted.

7 (WHEREUPON, the instrument hereinabove
8 marked for identification as State's
9 exhibit number three was admitted and
10 received into evidence, but not to be
11 received by the jury for deliberations.)

12 DIRECT EXAMINATION RESUMED BY MR. GLANZER:

13 Q. And if you would, please read Lillian's.

14 A. Okay. "Lillian is ten years old and has just
15 completed the fourth grade at Butts Road Intermediate
16 School. Her teacher is Mr. Burkey. I asked Lillian about
17 her favorite subject. Lillian said she liked math the best
18 and didn't like English and reading.

19 I asked Lillian who all she lives with. Lillian
20 said she lives with her grandparents (and Robert Hepner),
21 her sisters, Autumn and Elizabeth, and her cousins, Robbie
22 and Carlton.

23 Lillian said her mom and stepdad live in
24 Chesapeake but they visit each other a lot. I asked
25 Lillian if she knew why she had been brought to the center

1 to talk to me. Lillian said it was about the bad things
2 Lee Kirby did to her.

3 I told Lillian that was what we would be talking
4 about. I then explained the rules to Lillian as follows:
5 You know more than I about what happened. Always tell the
6 truth. No guessing. If you don't know or don't remember
7 say so. If I repeat a question it doesn't mean your first
8 answer was wrong and you can correct me if I get something
9 wrong. Lillian said she understood and would follow the
10 rules.

11 I told Lillian to tell me everything she could
12 remember about what happened. Lillian said that Lee hurt
13 her and touched her in ways she didn't like. Lillian said
14 it didn't feel right when he touched her. I asked Lillian
15 where Lee touched her. Lillian said he touched her private
16 parts, her pie and her butt. Lillian said her pie was her
17 front private part and her butt was her back private part.
18 I asked Lillian where this happened. Lillian said it
19 happened at their trailer when they were all living in
20 Opelika. Lillian said it happened in the living room and
21 in her mom's bedroom. I asked Lillian if her clothes were
22 on or off. Lillian said Lee told her to take her clothes
23 off. Lillian said she took all her clothes off. I asked
24 Lillian did anything happen to Lee's clothes. Lillian said
25 Lee took all his clothes off and then touched her privates

1 with his hands and his private part. I asked Lillian if
2 she had a name for Lee's private part and she said it was
3 his penis.

4 Lillian said Lee put his penis inside her butt
5 and inside her pie. I asked Lillian if Lee did anything
6 else with his penis. Lillian said Lee put his penis inside
7 her mouth. I asked Lillian what his penis felt like.
8 Lillian said it was hard and felt awful.

9 I asked Lillian if she felt anything come out of
10 Lee's penis when it was inside her mouth. Lillian said
11 something came out and it was white but she didn't know
12 what it was.

13 I asked Lillian who all was at home when this
14 happened. Lillian said her sisters Autumn and Elizabeth
15 were there and her mother would be at work.

16 I asked Lillian if Lee put his penis inside her
17 butt one time, two times or a bunch of times and she said
18 it happened a bunch of times.

19 I asked Lillian if Lee put his penis inside her
20 pie one time, two times or a bunch of times and she said it
21 happened a bunch of times.

22 I asked Lillian if Lee put his penis inside her
23 mouth one time, two times or a bunch of times and she said
24 a bunch of times.

25 Lillian said after he touched her that way he

1 would put her in the bath tub and bathe her.

2 I asked Lillian if Lee did anything to her when
3 she was in the bath tub. Lillian said sometimes Lee would
4 hold her head under the water and it would scare her.
5 Lillian said Lee would spank her and Autumn and leave
6 bruises on them for days.

7 I asked Lillian if Lee ever said anything to her
8 when he was touching her in these ways and she said no, not
9 that she could remember.

10 I asked Lillian if she ever told anybody about
11 this. Lillian said she remembered talking to Autumn about
12 it. Lillian said she never told anyone until a while ago.
13 Lillian said she told her best friend, Jackie Newman and
14 then her counselor in Virginia.

15 I asked Lillian what grade she was in when Lee
16 did these things to her. Lillian said she was in the
17 second grade.

18 Lillian said she went to a school in Opelika but
19 she couldn't remember the name of the school.

20 I asked Lillian if there was anything else she
21 could remember and she said no. I thanked Lillian for
22 talking to me and ended the interview." And this interview
23 lasted approximately forty-five minutes.

24 Q. The State has nothing further.

25 THE COURT: Cross.

CROSS EXAMINATION

BY MR. FUNDERBURK:

Q. Ms. Moss, how long did the interview with Lillian last?

A. About forty-five minutes.

Q. Okay. So you apparently saw these girls, one of them for forty minutes and the other one for forty-five minutes?

A. That's correct.

Q. Was that the only contact you had with these girls?

A. Yes, it is.

Q. All right. You haven't, you didn't see them before this time and you've not talked to them after that time?

A. I've seen them in the courthouse this week, but I have not --

Q. But as far as talking to them or interviewing them, you haven't?

A. No, I have not.

Q. Now apparently, based on the testimony of Officer Healy, available to you if you had asked for it would have been the other statements given by these girls in Virginia. Did you review those?

A. I did not.

Q. And also available were the medical examinations by Dr. Starling and Dr. Anz. Did you review those?

A. I did not. I was not trained to have a lot of

1 information prior to the interview, just to keep me from
2 having any bias when I go into the interviews.

3 Q. Yes, ma'am, but the bias you have is that you were not
4 seeking facts that could be verified independently of what
5 the girls were saying, that's one thing you were not
6 looking for, isn't it?

7 A. I was looking for, first of all to determine whether
8 or not abuse occurred and if it did occur to obtain as many
9 details from the children as I could, as they could give
10 me.

11 Q. Well, the details you were not obtaining though were
12 things like did this happen in the daytime or nighttime so
13 you could check the schedules of the parents to see if they
14 were in fact there together or not there during the time
15 when this allegedly occurred? You didn't get specific, did
16 you?

17 A. I did not on that item.

18 Q. Well, it was the only time you talked to them.

19 A. It is. I usually try to get when it's an ongoing
20 abuse situation, get as many details about the actual
21 abuse. They did say that it happened when their mother was
22 not at home, while she was at work.

23 Q. But for example did you, apparently you didn't because
24 it's not in here, you didn't ask them whether this occurred
25 in the daytime or the nighttime?

1 A. I did not.

2 Q. Now you didn't ask them for example if it occurred in
3 the daytime what hours, for example, Mr. Kirby was working?

4 A. I don't believe children this age could have told me
5 the hours, but I did not ask that question.

6 Q. They should know though whether this happened at night
7 when they were awakened or in the morning when they were
8 awakened, they should know that, shouldn't they?

9 A. If it had been one or two times possibly. Probably.

10 Q. If it always occurred at the same time, either the
11 morning time or the nighttime, wouldn't they at least have
12 enough understanding to know that?

13 A. I don't, I'm not for sure with it being an ongoing
14 situation.

15 Q. Now, did you try to verify any of -- well, first of
16 all, they didn't give any facts, but did you try to verify
17 any of the facts that you did get in these reports?

18 A. I complete the reports and then I furnish this to the
19 law enforcement agency and the social worker and basically
20 that's my job to do that and that's all I do in these
21 investigations.

22 Q. But you've given an opinion that you thought the girls
23 apparently were telling the truth, therefore I guess from
24 that we could assume there were no inconsistent statements
25 made to other interviewers?

1 A. I felt like they were telling me the truth. Today I
2 don't know about any inconsistencies.

3 Q. For example, It's already been referred to, there was
4 a recorded statement, which I believe was mentioned by
5 Officer Healy. And I believe they asked Autumn this, she
6 failed to mention, did not mention this business of oral
7 sex that she's mentioning to you. Wouldn't that be
8 important to know that maybe something serious had been
9 left out when she gave a recorded statement previously.

10 Q. I don't know who she gave the recorded statement to.
11 I think it depends on, you know, how she was questioned --

12 Q. It was given to her by a forensic interviewer, like
13 yourself.

14 A. Sometimes children don't tell everything that
15 happened.

16 Q. And sometimes they tell things that don't happen too,
17 don't they?

18 A. Sometimes they do but I think in situations like this
19 they would not have any, you know, I cannot think of a
20 reason they would have to make this up.

21 Q. Well, one reason, wouldn't it be sort of important to
22 know that if the girls, for example, one stated it always
23 happened at nighttime and one said it always happened in
24 the morning time, wouldn't it be important to know why
25 there was that difference, that they changed their story?

1 A. I think you would need to know first of all what they
2 consider nighttime and daytime. I mean nighttime to a, I
3 mean daytime to a eight year old could, even if it was
4 seven or eight o'clock in the morning if she was still in
5 the bed she might consider that being still nighttime.

6 Q. Well, did you find out, for example, that the time
7 frame when this occurred, one girl was, both girls caught
8 the same school but at 7:15 every morning? Wouldn't that
9 be important if one said it was during the day that you
10 would want to ask them something like that so you could
11 verify the time?

12 A. I did not ask them anything like that, because daytime
13 could be in the afternoon also.

14 Q. Yes, ma'am, wouldn't you think it would be important
15 to know that the father who is the accused here got off
16 from work at seven o'clock every morning and the girls were
17 waiting on the but by the time he got home every morning,
18 wouldn't that be important?

19 MR. GLANZER: We'd object to the testimony, he's
20 asserting that as if that's some fact before the
21 Court.

22 THE COURT: Overrule the objection. It's cross
23 examination.

24 Q. It would be important to know that little fact,
25 wouldn't it?

1 A. It wasn't in this interview.

2 Q. I know, but ma'am, you did the interview and you're
3 forming opinions without getting facts or without comparing
4 it to other statements that are made, or without comparing
5 it to whether any of this is supported by physical
6 evidence.

7 A. That's not my job to do that.

8 Q. Your job is just to talk to the girls and, for forty
9 or forty-five minutes and form opinions without knowing any
10 of the history, or any of the physical exams?

11 A. I formed my opinion based on the disclosure they gave
12 me during the interview.

13 Q. And I believe, and you correct me if I'm wrong, that
14 forensic interviewers are certainly taught to try to get
15 information on facts that can be verified so you could
16 separate the truth from fantasy. That's, you're trained to
17 do that, aren't you?

18 A. I was trained to do that and I felt like I was doing
19 it when talked to them about the, you know, real and
20 pretend and the importance of telling the truth.

21 Q. I mean, for example you want to be able to distinguish
22 whether in fact they saw Santa Claus flying over the house
23 or whether they just thought they saw Santa Claus flying
24 over the house. You've got to get facts that you can check
25 to know if what they're saying is the truth, don't you?

1 A. I obtained as many facts as I could with this being an
2 ongoing situation.

3 Q. Ma'am, all you had to do is ask the girls questions
4 that were asked on this stand, like what have you told
5 other people happened.

6 A. I would not ask that question during my forensic
7 interview.

8 Q. For example, if you want to know, for example, that
9 two years ago one of the girls, Autumn, told a doctor and
10 her mother --

11 MR. GLANZER: We object to the assertion that
12 this is some fact before the Court.

13 MR. FUNDERBURK: It is a fact before the Court.

14 THE COURT: Let's finish the question before you
15 -- see what it is first.

16 Q. That she had a, fell on a balance beam and had a
17 injury to her private parts and later changed that story,
18 wouldn't that be something that you would want to know,
19 that one of these girls changed, was willing to change her
20 story about what's happened and how it happened?

21 A. When I interviewed Autumn she told me that this is
22 what she told her mother that she had fallen off the
23 balance beam. Now I asked her about the doctor and she
24 said she did not remember going to the doctor.

25 Q. Well, would you have any idea to figure out why she

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3 A. No, children's memories, you know, are different at
4 different times, I guess. You're also talking about a, you
5 know, a good many times that this occurred according to the
6 child and it's, you know, which one are you going to talk
7 about during an interview.

14 A. I did not ask either child the time of day.

19 A. I did not ask the children the time of day.

21 THE COURT: Anything on redirect?

23 REDIRECT EXAMINATION

25 Q. Now, Lillian indicated that these things happened at